IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1640 of 1999
In
CIVIL APPLICATION No. 8363 of 1998
In
SPECIAL CIVIL APPLICATION No. 3767 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

VDPUNEKAR - Appellant(s)

Versus

C V SOM (I. A. S.) & 2 - Defendant(s)

==========

Appearance :

MR UPADHYAY FOR MR MUKESH H RATHOD for Petitioner

RULE SERVED for Respondent No(s).: 1,2.
MR KH BAXI for Respondent No(s).: 1,2.
MS.PAURAUMI SHETH, AGP for Respondent No(s).: 3.
==========

CORAM :HONOURABLE MR.JUSTICE R.S.GARG
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 12/07/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. After the award was made in favour of the workman, the respondents preferred Special Civil Application No. 3767 of 1997. In the said matter, the workman made Civil Application No. 8367 of 1998. It was submitted by the workman that in view of the provisions of Section 17-B of the Industrial Disputes Act, 1947, the establishment be ordered to make payment of the wages in accordance with the said provisions. The application was opposed by the establishment submitting, inter alia, that the workman was working in relief scarcity work and as that was sovereign function, a direction under Section 17-B could not be issued. The learned Single Judge upheld the objection raised by the establishment and rejected the Civil Application. Being aggrieved by the said order dated 21.10.1999, the workman is before this Court.

2. Learned counsel for the appellant-workman submitted that for application of Section 17-B of the Act, a Court is not required to see that the award is valid or not. The Court has simply to see that whether there is an award, the award directs reinstatement and against the said award

some proceedings have been brought before the High Court or the Supreme Court at the instance of the employer. He submits that the correctness and validity of the award is not to be seen for application of Section 17-B of the Act.

3. Learned counsel for the respondent, referring to the merits of the matter submitted that if the workman was employed in the scarcity work which was a sovereign function of the State, then, no order of reinstatement could be made in favour of the workman and as the award was patently illegal and the illegality is writ large, no order under Section 17-B could be passed. After hearing both the sides, we are of the opinion that for application of Section 17-B of the Act, the merits of the matter or the foundational facts, which led to making of the award are not to be seen. The Court has to confine itself to the relief granted by the Labour Court in favour of the workman. The Court only has to see that whether in the award a direction for reinstatement has been issued or not and if yes, whether the proceedings before the High Court are at the instance of the employer. If these pre-conditions are satisfied, then, Section-17-B would apply with full force. After going through the award, we must hold that there is an award in favour of the appellant,

the award directs reinstatement and the Special Civil Application No. 3767 of 1997 is at the instance of the establishment/employer. As all the conditions necessary for application of Section 17-B of the Act are fulfilled, the learned Single Judge could not reject the prayer made by the workman. The order passed by the learned Single Judge is set aside. The appeal is allowed. No costs. Respondents are directed to make payment of wages in accordance with Section 17-B of the Act from the date of filing of the Special Civil Application within a period of one month from today.

[R.S. GARG, J.]

[RAVI R. TRIPATHI, J.]

pirzada/-